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~~JUDGE'S COPY~~ @

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GUSTAVO BUSTOS-CONTRERAS,

Case No. **CV '11 - 632 KI**

Plaintiff,

COMPLAINT FOR UNLAWFUL
EMPLOYMENT PRACTICES
(Discrimination, Retaliation,
Whistleblowing)

v.

DEMAND FOR A JURY TRIAL

RITTER CHEMICAL LLC. &
XENIUM RESOURCES INC.

Defendants.

I

INTRODUCTION

1. Pursuant to Title VII of the Civil Rights Act of 1991 (42 USC § 2000e) and ORS 659A.030, Gustavo Bustos-Contreras brings suit to vindicate his right to be free from

discrimination in the terms, conditions and privileges of employment because of his national origin, including the right not to be discharged from employment for opposing and complaining about unlawful workplace discrimination. Pursuant to 42 USC §1981, as amended by the Civil Rights Act of 1991, Bustos-Contreras seeks vindication of the violation of his right to make and enforce contracts free from discrimination based on his race and/or national origin. Bustos-Contreras also brings a claim under ORS 659A.199 to vindicate his right to be free from retaliation for making a good faith report of information he believed was a violation of federal law. Bustos-Contreras seeks damages for lost wages, non-economic and punitive damages, prejudgment and post judgment interest and costs as described further, reasonable attorneys' fees and costs, and a permanent injunction as to prevent defendants from engaging in any discriminatory or retaliatory employment practice as alleged in this complaint.

II

JURISDICTION and VENUE

2. Bustos-Contreras asserts claims that arise under federal laws making federal court jurisdiction proper under 28 USC § 1343 and 28 USC § 1331. State law claims arise from the same common nucleus of operative fact and therefore this Court may exercise supplemental jurisdiction over them under 28 USC § 1367.

3. Defendant Ritter Chemical is located in Clackamas County, Oregon and the events underlying this Complaint took place there, making venue proper in the District of Oregon, Portland Division.

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III

PARTIES

4. Gustavo Bustos-Contreras is Latino and was born in Mexico and is of Mexican ancestry. He is a former employee of Defendant Ritter Chemical LLC, and was a resident of the State of Oregon, Multnomah County at all times relevant herein.

5. At all times relevant hereto, Defendant Ritter Chemical is a corporation doing business in Oregon, with a facility located in Wilsonville in Clackamas County, where the events at issue occurred.

6. At all times relevant hereto, Defendant Xenium Resources, Inc. is a corporation doing business in Oregon. Xenium Resources was a joint employer of Bustos-Contreras.

IV

FACTS

7. Defendants employed Bustos-Contreras from June 2007 through May 2010 in production at Defendant Ritter Chemical's facility in Wilsonville, Oregon.

8. Throughout his employment, Bustos-Contreras was treated less favorably than American counterparts, including, but not limited to the following:

- a. Being classified as an independent contractor while similarly situated American coworkers were classified as employees, with the employer's share of taxes paid and mandatory withholdings made;
- b. Not receiving vacation, health insurance, a retirement fund, or a life insurance policy that other similarly situated American employees were given;

c. Not being given proper safety equipment while handling dangerous chemicals; and

d. Being threatened and spoken to in a derogatory manner.

9. In April 2009, Defendant Ritter Chemical became aware that Bustos-Contreras paid his 2008 Federal Income Tax and the accountant Rob told Bustos-Contreras that the company did not want Mexicans to pay their taxes, threatening to call the police and have Bustos-Contreras deported. Subsequently the differential treatment described in paragraph 8(d) escalated.

10. On November 6, 2009, Bustos-Contreras complained to defendant Ritter Chemical about the differential treatment after someone tampered with his lunch and placed a heavy chain on his chair. Defendant failed to take corrective action.

11. On March 1, 2010, Bustos-Contreras filed a complaint with the Oregon Bureau of Labor and Industries alleging that Defendant subjected him to unlawful discrimination in the terms and conditions of his employment because of his national origin and retaliation for reporting information he believed to be a violation of federal law.

12. On or about April 27th, 2010, the differential treatment described in paragraph 8(d) escalated. Defendant Ritter Chemical's president Jaime Smith yelled at Bustos-Contreras, telling him he had no right to hire an attorney and stated that he did not want there to be any more complaints. Jaime Smith also contacted Bustos-Contreras's attorney and berated her for representing Bustos-Contreras.

13. On April 30, 2010, Defendant Xenium Resources' employee Shelley Johnson and Defendant Ritter Chemical's president Jaime Smith, owner Trevor Smith and manager Brendan

Worth met with Bustos-Contreras during his shift and asked him to sign an I-9 form. Jaime Smith knew that Bustos-Contreras was not authorized to work when he hired him, and had told Bustos-Contreras at that time that they liked to hire Mexicans because they cost less, only work for a year and then leave and if needed the employer can call the police and report them as undocumented. At the meeting Bustos-Contreras reminded them that he did not have documentation and could not sign the I-9 form. Bustos-Contreras was then told his employment would be terminated on May 14, 2010.

14. On May 14, 2010, Bustos-Contreras was fired.

15. As a result of defendants' termination of Bustos-Contreras, he has suffered lost wages in an amount to be determined by a jury at trial.

16. As a further result of defendants' actions, Bustos-Contreras suffered emotional distress in an amount to be determined by a jury at trial.

17. Defendants acted wilfully, and with reckless disregard for Bustos-Contreras' statutory employment rights.

18. For the purposes of Bustos-Contreras's Title VII claim, he has satisfied the administrative prerequisites prior to filing this Complaint.

V

FIRST CLAIM FOR RELIEF (Title VII / ORS 659A.030)

Unlawful Discrimination

19. Bustos-Contreras realleges and incorporates paragraphs 1 through 18 above.

20. Defendants caused Bustos-Contreras to be subjected to repeated discrimination against him in the terms, conditions, and privileges of his employment on the basis of his

national origin in violation of his civil employment rights under Title VII of the Civil Rights Act of 1991 (42 USC § 2000e), and ORS 659A.030.

21. Defendant's actions caused Bustos-Contreras to incur economic damages for lost wages and benefits in the amounts alleged above.

22. Defendant's actions caused Bustos-Contreras to incur emotional distress and suffering in an amount to be determined by a jury at trial.

23. Bustos-Contreras should be awarded punitive damages against the defendants in amounts to be determined at trial.

24. Bustos-Contreras should be awarded reasonable attorney fees and litigation expenses/costs against defendant pursuant to 42 USC § 1988(b) & (c), ORS 659A.121, and ORS 20.107.

VI

SECOND CLAIM FOR RELIEF (Title VII/ORS 659A.030(1)(f))

Retaliation for Opposing Discrimination

25. Bustos-Contreras realleges and incorporates paragraphs 1 through 18 above.

26. Defendants' conduct constitutes a violation of Bustos-Contreras's civil employment rights under Title VII and ORS 659A.030(1)(f) not to be subject to retaliation for opposing unlawful discrimination.

27. Bustos-Contreras should be awarded substantial economic and non-economic damages against defendants in amounts to be determined at trial.

28. Bustos-Contreras should be awarded punitive damages against the individual defendants in amounts to be determined at trial.

29. Bustos-Contreras should be awarded reasonable attorney fees and litigation expenses/costs, against defendants.

VII

THIRD CLAIM FOR RELIEF

(42 USC §1981/Enforcement of Contracts)

30. Bustos-Contreras realleges and incorporates paragraphs 1 through 18 above.

31. As described herein, by discriminating against him, creating a hostile work environment, retaliating against him for complaining of unlawful discrimination, including terminating his employment, defendants interfered with Bustos-Contreras's statutory rights to make and enforce contracts in violation of 42 USC §1981 as amended by the Civil Rights Act of 1991.

VII

FOURTH CLAIM FOR RELIEF (ORS 659A.199)

32. Bustos-Contreras realleges and incorporates paragraphs 1 through 18 above.

33. As described therein, defendants retaliated against Bustos-Contreras for reporting information that he believed to be a violation of federal law by creating a hostile work environment.

34. Bustos-Contreras should be awarded substantial economic and non-economic damages against defendants in amounts to be determined at trial.

35. Bustos-Contreras should be awarded punitive damages against defendants in amounts to be determined at trial.

36. Bustos-Contreras should be awarded reasonable attorney fees and litigation

expenses/costs, against defendants.

WHEREFORE, Bustos-Contreras prays for relief from the Court as follows in accordance with the proof at trial:

1. Award Bustos-Contreras economic and non-economic damages against defendants in amounts to be determined at trial.
2. Award Bustos-Contreras punitive damages against defendants in an amount to be determined at trial.
3. Award Bustos-Contreras his reasonable attorney's fees and litigation expenses/costs against defendants.
4. Prejudgment and post judgment interest as appropriate and allowed by law;
5. On all claims, as applicable, amounts necessary to offset the income tax consequences of receiving a lump sum payment, rather than receiving a payment of wages over the applicable time frame;
6. Any and all other relief as this court may deem proper.

PLAINTIFF DEMANDS A JURY TRIAL

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